

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

MARCOR REMEDIATION, INC.

Employer

and

Case 19--RC--14519

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 400, AFL-CIO; LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA, LOCAL 1334, AFL-CIO;  
AND UNITED BROTHERHOOD OF CARPENTERS &  
JOINERS OF AMERICA, PACIFIC NORTHWEST  
REGIONAL COUNCIL, LOCAL 28

Joint Petitioners

**SUPPLEMENTAL DECISION AND DIRECTION OF RERUN ELECTION**

Pursuant to a Decision and Direction of Election issued by the Regional Director on June 25, 2004, an election by mail ballot was conducted in the following unit of employees:

All full-time and regular part-time hazardous material handlers, hazardous materials equipment operators, equipment operators, laborers, truck drivers, and foremen employed by the Employer at the EPA Superfund Cleanup Site in Libby, Montana; excluding all managerial employees, office clerical employees, guards and supervisors as defined in the Act.

The mail ballots were counted on August 12, 2004, in the Regional office in Seattle, Washington. The Joint Petitioners had representatives present at the count. The Employer's counsel attended via telephone conferencing. The Tally of Ballots was served upon the parties at the conclusion of the election which set forth the following results:

Approximate number of eligible voters .....	30
Void ballots .....	0
Votes cast for Petitioner .....	14
Votes cast against participating labor organization.....	8
Valid votes counted .....	22
Challenged ballots .....	4
Valid votes counted plus challenged ballots .....	26

Before the ballot count, the Joint Petitioners challenged three voters and the Employer challenged one voter. All challenged voters were on the Employer's *Excelsior* list. The Board agent then opened and commingled the remaining ballots. At that point, it became apparent that the number of ballots that had been returned exceeded the number of individuals on the *Excelsior* list. The Board agent then explained that the Joint Petitioners had given the Region the names and addresses of five individuals who were not on the *Excelsior* list and had requested that they be sent ballots as the Joint Petitioners believed them to be eligible voters. The Region complied with the request but contrary to its normal practice and policy, it did not notify the Employer of the additional names and addresses or of the fact that mail ballots were sent to these individuals. Further, the Region inadvertently failed to challenge the ballots of the three voters who had returned their ballots as "Not on List" challenges. Since the Employer was not aware that mail ballots had been sent to these three voters, it did not have the opportunity to challenge their ballots. Once the Employer realized the Region's error, it protested the continuation of the ballot count. The Region nevertheless proceeded with the count and a Tally of Ballots was issued.

Attempts by the Region to reach a Stipulation with the parties, setting aside the election and conducting a new election, were unsuccessful.

In conducting elections, the Board seeks to maintain and protect the integrity of its procedures. See, e.g., *Glacier Packing Co.*, 210 NLRB 571(1974); *Kerona Plastics*, 196 NLRB 1120 (1972). To this end, election conditions must, to the extent possible, approach “laboratory” conditions so as to facilitate expression of uninhibited employee choice. *General Shoe Corp.*, 77 NLRB 124, 127 (1948). In light of such goals, Board agent conduct is sufficient to set aside an election where it tends to destroy confidence in the Board’s election process or could reasonably be interpreted as impugning the above-noted election standards. *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967).

Even in the absence of objections, the Board has long recognized its obligation to ensure the integrity of its election procedures. For example, the Board has noted, “The Board is responsible for assuring properly conducted elections.” *Active Sportswear Co., Inc.*, 104 NLRB 1057 (1054). Where, as here, an irregularity concerning the conduct of the election is known to the Region, the Board will, on its own, consider such circumstances. Here, the irregularity resulted in the inclusion in the tally of three disputed ballots, which, taken together with the four challenged ballots, could clearly have affected the outcome of the election. I am, therefore, constrained to set the election aside and direct that a new election be held. *Active Sportswear Co.*, *supra*.

#### **DIRECTION OF RERUN ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the last payroll period

ending immediately preceding the date of the issuance of the Notice of Rerun Election, including employees who did not work during that period because they were ill, on vacation or temporarily laid off, and those in the Unit who have been employed for 30 working days or more within the 12 months preceding the eligibility date of the election, or had some employment during those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date, excluding those who have quit voluntarily or have been terminated for cause prior to the completion of the last job for which they were employed. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 400, AFL-CIO; Laborers' International Union of North America, Local 1334, AFL-CIO;

and United Brotherhood of Carpenters & Joiners of America, Pacific Northwest Regional Council, Local 28.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 13, 2004.

**DATED** at Seattle, Washington, this 30th day of August 2004.

/s/ Richard L. Ahearn  
Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
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